
NAVIGATING THE INTERSECTION: EXPLORING THE DYNAMICS OF STATE-RELIGION RELATIONS IN SOUTH AFRICA

Anisha Kar, KIIT School of Law

ABSTRACT

This research delves into the intricate interplay between the state and religion within the context of South Africa. Amidst the country's rich tapestry of cultural and religious diversity, examining the relationship between the state and various religious entities becomes imperative. This study aims to dissect the evolving nature of this relationship, uncovering its implications on governance, societal cohesion, and individual rights. Using a multidisciplinary approach, it scrutinizes historical precedents, legal frameworks, and contemporary socio-political dynamics to provide a comprehensive understanding of the complex dynamics shaping state-religion relations in South Africa.

Research Questions:

1. What are the key provisions related to freedom of religion in the 1996 Constitution of South Africa, and how have they impacted religious practice and pluralism in the country?
2. How has the South African Charter of Religious Rights and Freedoms influenced the relationship between different religious groups and their interactions within society?
3. What are the main sources of religious conflicts in South Africa, and how have they been addressed or mitigated within the legal framework of the country?
4. How do religious communities navigate the tension between individual religious freedoms and the need to prevent hate speech and discrimination based on religion?
5. What role do religious institutions play in promoting religious tolerance, reconciliation, and social cohesion in post-apartheid South Africa?

Objectives:

1. To examine the constitutional provisions related to freedom of religion and their implementation in South Africa.
2. To analyze the impact of the South African Charter of Religious Rights and Freedoms on religious pluralism and interfaith relations.
3. To identify the root causes of religious conflicts in South Africa and assess the effectiveness of legal mechanisms in addressing and resolving them.
4. To explore the challenges faced by religious communities in balancing individual religious freedoms with the need to combat hate speech and discrimination.
5. To assess the role of religious institutions in fostering religious tolerance, reconciliation, and nation-building in post-apartheid South Africa.

Introduction

Many cultures and religions are practiced in the country of South Africa. There are

about “79.2 per cent black people; 8.9 per cent white people; 8.9 per cent coloured people;¹ 2.5 per cent Indians/Asians; and 0.5 per cent ‘others’”.² There is a total of 11 official languages, which reflects the plurality of cultures in the country. As per the 2011 census, “22.7 per cent speak Isizulu, IsiXhosa 16 per cent; Afrikaans 13.5 per cent; Sepedi 9.1 per cent; SeTswana 8 per cent; English 9.6 per cent; SeSotho 7.6 per cent; Xitsonga 4.5 per cent”; etc.³

Not only there are many languages and many cultures, there are many religions that are practiced in this country as well. Around 79.8% of population practice Christianity as their religion. Different forms of Christianity are embraced by the people in the country. Anglicans, Methodists, Lutherans, Presbyterians, etc. are a few examples. Apart from Christianity other religions are also practiced by the populace. “Around 0.2 per cent people profess the Jewish religion; 1.1 per cent people profess Islam; 1.3 per cent profess Hinduism; and 0.1 per cent people have embraced Buddhism.” A large chunk of the population is found practicing the African traditional religion. As per data available, of the total African traditional religion followers, 12 per cent are in this country.⁴ This shows, that not only many cultures flourish there but many religions are also professed by the people of South Africa.

Religion and the Constitution of South Africa

The 1996 Constitution of South Africa has brought about a paradigm change for all the religions practiced in the country. The Constitution also includes within itself a Bill of Rights. It is through this Constitution, that people belonging to all religious groups were given the freedom of practicing the religion of their choice.⁵ Sections 7-39 (Chapter II) of the South African Constitution of 1996, deals with the Bill of Rights which further includes and protects the right of Freedom of Religion, belief and opinion.⁶ Various religious groups in the country though have the rights to restrict some of the rights of their members, but it should be in accordance with the Constitution.⁷ They have the right to form various religious associations as well. Constitution of the country strictly prohibits discrimination against any religion and has also

¹ Coloured South Africans are a people of mixed lineage. They are descendants of slaves who were brought to the country from East and Central Africa; the indigenous Khoisan, who lived in the Cape at the time, indigenous Africans and whites. The majority speak Afrikaans.
<http://www.southafrica.info/about/people/population.htm> (accessed 09 May, 2023).

² Ibid.

³ Ibid.

⁴ South African Christian handbook 2007-2008 (2007) 69 74.

⁵ Sec 15 Constitution of the Republic of South Africa.

⁶ Constitution of South Africa, Secs 7, 9, 30, 31, 185 & 234.

⁷ Id. Sec 36.

stated that freedom of expression does not mean spread of hatred based on religion. Personal laws and family laws belonging to different religions also flourish in this country.

Freedom of Religion and Charter of Religious Rights

Immediately after the enactment of the 1996 Constitution, a question arose with regard to the implications of Section 15 of the Constitution on the religions practiced in the country. This issue led to a lot of debate and discussion and ultimately resulted in the setting up of the 'South African Charter of Religious Rights and Freedoms'.⁸

It was on 21st of October, 2010 that the Charter was publicly endorsed. The occasion was graced by about 91 leaders who represented various religious, legal, human rights and media organizations in and outside the country.

The charter not only addressed the matter of the freedoms and religious rights but also helped establish a healthy relationship between the diverse religions in the country. It defines the various rights and freedoms that can be claimed by the various religions. It also stresses on the religions coexisting in a friendly environment and working together with each other for the common good of the country.

The rights guaranteed to various religious groups under this charter are mentioned in Article 1, Article 6, Article 2, Article 7, Article 2 (3) and Article 9. These articles deal with various rights relating to 'freedom of religion such as the right of citizens to make choices according to their convictions, the right of citizens to change their faith, right to gather to observe religious belief, freedom of expression regarding religion', etc.⁹

In order to see that the charter is ultimately enacted as law a 'Council for the Promotion and Protection of Religious Rights and Freedoms' was also established.

Legal Framework

The official state law has influence of both Western and African components. Judicial decisions in the country are influenced more by the common laws of England whereas the

⁸ South African Charter of Religious Rights and Freedoms.

⁹ Id.

customary laws are mostly influenced by the African component.¹⁰ Apart from these official state laws, other customary laws of various religions like Hinduism, Islam and Judaism etc. are also in practice in the country.

Religious conflicts are quite frequent in the country as the official laws requires religious groups to register with the government on the one hand, but on the other hand some religious groups do engage in hate speech, indulge in crimes against people of other religion and thus violate the freedom of religion and speech. Some such religious conflicts and the corresponding judicial decisions have been discussed below.

Religious conflicts and judicial decisions

In one of the cases where a father gave the corporal punishment (spanking) to his son on the ground that the son is not disciplined, was brought to the notice by one of the NGOs 'Freedom of Religion' in SA. In response to that the Constitutional Court gave the ruling that corporal punishment including spanking is not included in the right to religious freedom.

In the year 2019, a total of 36 Anti-Semitic cases were recorded by 'the South African Jewish Board of Deputies (SAJBD)'.¹¹ It was considered the lowest in a phase of 15-year time. In fact, in the year 2018, 62 cases had been recorded, the SAJBD noted. In many such cases physical assaults were reported. But the cases of damage and desertion of property of the Jews had also taken place in few cases.

Anti Semitic comments throughout the year was being made by various religious groups. A number of anti- Muslim incidents took place along with numerous individuals making anti-Semitic comments throughout the year. Religious leaders reported a number of anti-Muslim incidents, including vandalism of several mosques and desecration of Muslim graves in a Cape Town cemetery, and attempts to prevent the slaughter of animals for Eid-al-Adha.¹²

¹⁰ C Rautenbach et al *Inleiding tot regspluralisme in Suid-Afrika* (Introduction to legal pluralism in South Africa) (2010) 3.

¹¹ World Jewish Congress, South African Jewish community welcomes 15-year low in antisemitic incidents, [worldjewishcongress.org/en/news/](https://www.worldjewishcongress.org/en/news/south-african-jewish-community-proud-to-note-15-year-low-in-antisemitic-incidents-2-4-2020), Feb 11,2020, <https://www.worldjewishcongress.org/en/news/south-african-jewish-community-proud-to-note-15-year-low-in-antisemitic-incidents-2-4-2020>

¹² American Civil Liberties Union, Nationwide Anti-Mosque Activity, [aclu.org/issues/national-security/discriminatory-profiling/](https://www.aclu.org/issues/national-security/discriminatory-profiling/), January 2022, <https://www.aclu.org/issues/national-security/discriminatory-profiling/nationwide-anti-mosque-activity>.

In June 2019, a lady defence officer was charged by the ‘South African National Defence Force’ (SANDF) for refusing to remove her religious headscarf during duty hour. The officer, Major Fatima Isaacs used to wear the scarf during her entire service period of more than a decade.¹³

Yet another such conflicting case took place in September 2019 when the CRL denounced a public school in Alberton, Gauteng for promoting a specific religion. High Court cited a ruling where public schools found to be promoting one religion over others were declared unconstitutional. It was complained by one of the parents that in the school, Monday morning Bible is being read, and on Wednesday religious periods were being taken by a teacher from a church.¹⁴

In February 2019, it was found out that a video-clip of a pastor who was allegedly raising someone from dead was widely shown in the internet. In response to this, the then minister of cooperative governance and traditional affairs urged the CRL to “protect the public against abuse in the name of religion.” The new CRL chair then stated that in the name of religion such things should not come to the public domain and some sort of regulation of religious practices is required.¹⁵

In 2018 a hate crime and hate speech bill was introduced by the ‘Department of Justice to Parliament’. The bill was introduced with a view to criminalise any action or statement motivated by bias or hatred towards an individual on the basis of a number of criteria such as ‘ethnic, national, religious, or sexual identity; health status; employment status’, etc. But the ‘Parliamentary Portfolio Committee on Cooperative Governance and Traditional Affairs’ expressed that the religious community opposes the CRL proposal. Those who opposed the bill were religious figures, media representatives, civil society and NGOs. Their argument was that, ‘the bill’s definition of hate crimes and speech was too vague and could potentially restrict freedom of religion and speech’.¹⁶

Several such instances have been recorded by police relating to religious conflicts. Sometimes it was found that the Jewish cemeteries are attacked and destroyed, at times it was found that intolerant people attacked Muslim families for animal slaughter during Eid-al-Adha. Action

¹³ Hassan Isilow, South African: Outrage as Officer Charged over Headscarf, [aa.com.tr/en/africa/](https://www.aa.com.tr/en/africa/), June 28, 2019, <https://www.aa.com.tr/en/africa/south-africa-outrage-as-officer-charged-over-headscarf/1517838>.

¹⁴ News24, Man hauls 6 schools to court over religious teachings in state school, [news24.com/News24/](https://www.news24.com/News24/man-hauls-6-schools-to-court-over-religious-teachings-in-state-school-20170428), April 28, 2017, <https://www.news24.com/News24/man-hauls-6-schools-to-court-over-religious-teachings-in-state-school-20170428>.

¹⁵ US Dept. of Justice, 2019 Report on International Religious Freedom: South Africa, [state.gov/reports](https://www.state.gov/reports/2019-report-on-international-religious-freedom/south-africa/), May 08, 2022, <https://www.state.gov/reports/2019-report-on-international-religious-freedom/south-africa/>

¹⁶ US Dept. of Justice, Federal Laws and Statutes, [justice.gov/hatecrimes/laws-and-policies](https://www.justice.gov/hatecrimes/laws-and-policies), May 08, 2022, <https://www.justice.gov/hatecrimes/laws-and-policies>.

by the state had been taken most of the time against the culprits. However, the moot problem is religious intolerance of different religious groups against other religions still thriving in South Africa despite the constitutional and legislative measures to check such conflicting situation.

Various senseless acts against Islam have also surfaced such as torching of artworks in a mosque due to some fake news circulating that students from a school have been kidnapped by Pakistanis and Bangladeshis. In Cape Town, a neighbor of the 'Zeenatul Islam Mosque' in the neighborhood lodged a complaint during Ramadan that the mosque's call to prayer is creating noise. A number of organizations however defended the mosque.

A number of such religious conflicts have arisen from time to time in the country of South Africa. However, due to the constitutional and legal framework of the country these conflicts were never supported by the authorities. This has resulted in continuance of a multi- ethnic and multi-religion society in the country.

Conclusion:

Despite the fact that many religions thrive in South Africa, still there are tendencies among few religious groups to go against other religions. However due to the non- existence of a single religion as a dominant religion or a declaration by the state that one particular religion is an official religion, such tendencies gets wiped out over time, peace and tranquility persist in the long run. South African Constitution has adopted a secularist approach where all religions are treated equal.¹⁷

Christianity though has prevailed in the country for a considerably long time, but it is never accepted there as an established religion. In the case of African religion, in the past, several attempts have been made to give a separate treatment to this religion, to bring their rights into the legal system but it has never attained the status of a special religion. So, what is required is to ensure that there is no single dominant religion in the country so that all religions can thrive and flourish together giving equality of status to all religions. In order to achieve this, state should continue to adopt policies protecting the interest of all religious groups, and suppressing such anti secularist tendencies among religious groups from time to time. As long

¹⁷ Sec 7(2), Constitution of the Republic of South Africa, 1996.

as the Constitution of the country and legislative measures of the Government will adopt such policies, freedom of religion will exist and flourish there despite religious conflicts.